IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Rev. No.874 of 2007
Date of Decision:- 17.05.2007

Gurmail Singh ....Petitioner(s)

through
Mr.A.S.Virk, Advocate

vs.

State of Haryana ....Respondent(s)

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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1) Whether Reporters of the local papers may be allowed to see the judgment?
2) To be referred to the Reporters or not?
3) Whether the judgment should be reported in the Digest?

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SURYA KANT, J.

This revision petition is directed against the order dated 5.5.2007 passed by the learned Special Judge, Kaithal whereby charges under Section 7/13 (1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') have been ordered to be framed against the petitioner. The petitioner also seeks setting aside of the consequential charge-sheet dated 9.5.2007.

The petitioner is a Sub-Inspector in Haryana Police against whom F.I.R.No.16 dated 25.4.2003 under Sections 7/13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') and Sections 332/353 IPC was registered at Police Station, State Vigilance Bureau, Ambala on a written complaint dated 25.4.2003 made by one Naresh Kumar son of Goverdhan Dass. As per the allegations therein, the petitioner along

with his co-accused demanded bribe from the complainant and on a complaint made by him to the State Vigilance Bureau, Ambala, raid was conducted by the police party headed by Inspector Gurdeep Singh and the petitioner as well as his co-accused (Karan Singh) were apprehended at the spot while accepting the illegal gratification.

After a prolonged delay, the learned Additional Sessions Judge, Kaithal vide his order dated 27.1.2007 observed that a *prima-facie* case to frame the charges against the petitioner and his co-accused was made out. Consequently, it was directed that both the accused be charge-sheeted for the offence committed under Section 7/13 of the Act. In addition, the petitioner's co-accused (Karan Singh) was also charge-sheeted for the offence punishable under Section 332/353 IPC.

At this stage, it may be mentioned here that at the time of passing of the above-stated order dated 27.1.2007, the learned Additional Sessions Judge, Kaithal heard the parties at length who had also submitted their "written arguments along with photostat copy of the judgments mentioned in the said written arguments on the point of validity of sanction to prosecute." Regarding the issue of validity of sanction to prosecute, the learned Additional Sessions Judge observed as follows:-

> *"However, the documents produced by the accused would be considered at the time of final disposal of case as per law. Let both the accused be charge-sheeted for the commission of offences punishable under Sections 7/13 of the PC Act and accused Karan Singh be also charge-sheeted for the offence punishable under Sections332 and 353 IPC."*

Aggrieved at the above stated order, the petitioner approached

this Court by way of Crl.Rev.No.245 of 2007. When the matter was being argued, various contentions were raised on behalf of the petitioner, however, finally he confined himself to the limited issue that in the written arguments submitted by him various other contentions i.e. other than the validity of sanction to prosecute, were also raised but the same went untouched while passing the impugned order dated 27.1.2007.

In this backdrop, the above-stated Crl.Rev.petition was partly allowed by this Court vide order dated 5.4.2007 in the following terms:-

> "*True it is that at the time of framing of charges, the Court is only required to form a prima facie opinion. However, such opinion is formed on the basis of material placed on record along with the report under Section 173 Cr.P.C.*
>
> *In the present case, the learned Additional Sessions Judge has dealt with the petitioner's contention regarding the competence of the Sanctioning Authority, however, rest of his contentions, as find mentioned in the written arguments, a copy of which has been placed on record as Annexure P-19, have not been dealt with while forming the prima facie opinion.*
>
> *Consequently, this revision petition is partly allowed only to the limited extent that the impugned order dated 27.1.2007 is set aside with a direction to the learned Special Judge-cum-Additional Sessions Judge, Kaithal to consider the petitioner's other contentions also and thereafter only to form an opinion as to whether or not*

the petitioner is required to be charge-sheeted.

As an abundant caution, it is clarified that this order shall not be construed to mean as if the petitioner's contentions contained in the written arguments have been prima facie accepted by this Court or that the learned Special Judge is obligated to deliver a 'Judgment' at the above-stated stage."

In deference to the above-reproduced directions issued by this Court, the learned Additional Sessions Judge has now passed the impugned order dated 5.5.2007 which is self-speaking and runs into several pages. The petitioner's various contentions have been dealt with in such a manner that only *prima-facie* and purely tentative view of the learned trial Court finds reflected therein.

The learned Additional Sessions Judge, however, has again come to the conclusion that *prima facie,* the petitioner is liable to be charge-sheeted under Sections 7 and 13 of the Act.

Still aggrieved, the petitioner has once again approached this Court.

Notwithstanding the fact that the learned Additional Sessions Judge in his order dated 27.1.2007 has already observed that the various contentions raised by the petitioner questioning the validity of the sanction to prosecute him, would be considered at the time of final disposal of the case as per law, it is vehemently argued on behaslf of learned counsel for the petitioner that neither the sanction to prosecute the petitioner has been accorded by the Competent Authority nor the same is valid as per law.

Series of judgments, a few of which are noticed below, have

been relied upon by the learned counsel for the petitioner in support of his above-noticed contentions.

(i) **State of Tamil Nadu vs. M.M.Rajendran** 1998(9)SCC 268; (ii) **State through C.B.I. vs. Ravinder Singh** 1995(2) RCR (Crl.) 264; (iii) **Prithi Pal Singh vs. State of Punjab** 1991 Crl.L.J.2541 P&H; (iv) **The P.P. vs. G.Sadagopan** 1953 Crl.L.J.1429 Madras; (v) **Karim Bux vs. Rex** 51 Crl.L.J.(1950) 1323; (vi) **Parkash Singh Badal & anr. vs. State** 2007(1) RCR (Crl.) 1 SC; (vii) **V.Venkata Subarao vs. State** 2007(1) RCR (Crl.) 519 SC; (viii) **State of Karnataka vs. C.Nagarajaswamy** 2005 (8) SCC 370; (ix) **Ram Krishan Prajapati vs. State of U.P.** 2000(10) SCC 43; (x) **State of Goa vs. Babu Thomas** 2005(8) SCC 130; and (xi) **Manoranjan Prasad Chodhary vs. State of Bihar** 2002(10) SCC 668

Since at the stage of framing of charges the Court is required to form only a *prima facie* opinion on consideration of the material on record and is not required to deliver a 'judgment', I am satisfied that at this stage, Section 19(3) of the Act sufficiently meets both the contentions raised on behalf of the petitioner.

Consequently, I do not find any merit in this petition which is accordingly dismissed, however, with a clarificatory observation that the petitioner shall be at liberty to agitate his contentions, namely, lack of competence in the grant of sanction to prosecute or that the sanction is totally invalid, at an appropriate stage and the same shall be considered in accordance with law.

May 17, 2007 **(SURYA KANT)**
poonam **JUDGE**